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HOUSE BILL 314

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; PROVIDING
FOR BONDING AND BACKGROUND CHECKS; CHANGING LICENSING FEES;
REVISING THE DISPOSITION OF THE PHARMACY FUND; AMENDING
SECTIONS OF THE PHARMACY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-11-14 NMSA 1978 (being Laws 1969,
Chapter 29, Section 13, as amended) is amended to read:

"61-11-14. PHARMACY LICENSURE--WHOLESALE DRUG
DISTRIBUTION BUSINESS LICENSURE--REQUIREMENTS--FEES--
REVOCATION.--

A. Any person who desires to operate or maintain
the operation of a pharmacy or who engages in a wholesale drug
distribution business in this state shall apply to the board
for the proper license and shall meet the requirements of the

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1 board and pay the fee for the license and its renewal.

2 B. The board shall issue the following classes of
3 licenses that shall be defined and limited by regulation of the
4 board:

- 5 (1) retail pharmacy;
 - 6 (2) nonresident pharmacy;
 - 7 (3) wholesale drug distributor;
 - 8 (4) drug manufacturer;
 - 9 (5) hospital pharmacy;
 - 10 (6) industrial health clinic;
 - 11 (7) community health clinic;
 - 12 (8) department of health public health
- 13 offices;
- 14 (9) custodial care facility;
 - 15 (10) home care services;
 - 16 (11) emergency medical services;
 - 17 (12) animal control facilities;
 - 18 (13) wholesaler, retailer or distributor of

19 veterinary drugs bearing the legend: "caution: federal law
20 restricts this drug to use by or on the order of a licensed
21 veterinarian". Such drugs may be sold or dispensed by any
22 person possessing a retail pharmacy license, wholesale drug
23 distributor's license or drug manufacturer's license issued by
24 the board, without the necessity of acquiring an additional
25 license for veterinary drugs;

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- 1 (14) returned drugs processors;
- 2 (15) drug research facilities;
- 3 (16) drug warehouses;
- 4 (17) contact lens sellers;
- 5 (18) medicinal gas repackagers; and
- 6 (19) medicinal gas sellers.

7 C. Every application for the issuance or biennial
8 renewal of:

9 (1) a license for a retail pharmacy,
10 nonresident pharmacy, hospital pharmacy or drug research
11 facility shall be accompanied by a fee set by the board in an
12 amount not to exceed three hundred dollars (\$300) per year;

13 (2) a license for a wholesale drug
14 distributor, drug manufacturer or drug warehouse shall be
15 accompanied by a fee not to ~~[exceed five thousand dollars~~
16 ~~(\$5,000) per year; provided that the fee shall not]~~ exceed one
17 thousand dollars (\$1,000) per year ~~[upon the implementation of~~
18 ~~a medicare prescription drug benefit program, pursuant to~~
19 ~~Sections 1860D-1 through 1860D-24, except Section 1860D-4, of~~
20 ~~Public Law 108-173, the Medicare Prescription Drug,~~
21 ~~Improvement, and Modernization Act of 2003];~~

22 (3) a license for a custodial care facility or
23 a returned drugs processor business shall be accompanied by a
24 fee set by the board in an amount not to exceed two hundred
25 dollars (\$200) per year; and

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1 (4) a license for an industrial health clinic;
2 a community health clinic; a department of health public health
3 office; home care services; emergency medical services; animal
4 control facilities; or wholesaler, retailer or distributor of
5 veterinary drugs shall be accompanied by a fee set by the board
6 in an amount not to exceed two hundred dollars (\$200) per year.

7 D. If it is desired to operate or maintain a
8 pharmaceutical business at more than one location, a separate
9 license shall be obtained for each location.

10 E. Each application for a license shall be made on
11 forms prescribed and furnished by the board.

12 F. Any person making application to the board for a
13 license to operate a facility or business listed in Subsection
14 B of this section in this state shall submit to the board an
15 application for licensure indicating:

16 (1) the name under which the business is to be
17 operated;

18 (2) the address of each location to be
19 licensed and the address of the principal office of the
20 business;

21 (3) in the case of a retail pharmacy, the name
22 and address of the owner, partner or officer or director of a
23 corporate owner;

24 (4) the type of business to be conducted at
25 each location;

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1 (5) a rough drawing of the floor plan of each
2 location to be licensed;

3 (6) the proposed days and hours of operation
4 of the business; and

5 (7) other information the board may require,
6 including a criminal background check and financial history.

7 G. After preliminary approval of the application
8 for a license for any facility or business listed in Paragraphs
9 (1) through (8) and (10) through [~~16~~] (19) of Subsection B of
10 this section, a request for an inspection, together with an
11 inspection fee not to exceed two hundred dollars (\$200), shall
12 be submitted to the board for each business location, and an
13 inspection shall be made of each location by the board or its
14 agent.

15 H. Following a deficiency-free inspection, the
16 executive director of the board may issue a temporary license
17 to the applicant. The temporary license shall expire at the
18 close of business on the last day of the next regular board
19 meeting.

20 I. Licenses, except temporary licenses provided
21 pursuant to Subsection H of this section, issued by the board
22 pursuant to this section are not transferable and shall expire
23 on the expiration date set by the board unless renewed. Any
24 person failing to renew a license on or before the expiration
25 date set by the board shall not have the license reinstated

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1 except upon reapplication and payment of a reinstatement fee
2 set by the board in an amount not to exceed one hundred dollars
3 (\$100) and all delinquent renewal fees.

4 J. The board, after notice and a refusal or failure
5 to comply, may suspend or revoke any license issued under the
6 provisions of the Pharmacy Act at any time examination or
7 inspection of the operation for which the license was granted
8 discloses that the operation is not being conducted according
9 to law or regulations of the board.

10 K. Pharmaceutical sales representatives who carry
11 dangerous drugs shall provide the board with a written
12 statement from the representative's employer that describes the
13 employer's policy relating to the safety and security of the
14 handling of dangerous drugs and to the employer's compliance
15 with the federal Prescription Drug Marketing Act of 1987.
16 Pharmaceutical sales representatives are not subject to the
17 licensing provisions of the Pharmacy Act."

18 Section 2. Section 61-11-19 NMSA 1978 (being Laws 1969,
19 Chapter 29, Section 18, as amended) is amended to read:

20 "61-11-19. FUND ESTABLISHED--DISPOSITION--METHOD OF
21 PAYMENT.--

22 A. There is established in the state treasury the
23 "pharmacy fund".

24 B. All funds received by the board and all money
25 collected under the Pharmacy Act or any other act administered

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1 by the board shall be deposited with the state treasurer for
2 credit to the pharmacy fund.

3 C. Payments from the pharmacy fund shall be made
4 upon warrants of the secretary of finance and administration on
5 vouchers issued in accordance with the budget approved by the
6 department of finance and administration.

7 ~~[D. Amounts paid into the pharmacy fund pursuant to~~
8 ~~Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978~~
9 ~~shall be used for a prescription drug program for persons over~~
10 ~~the age of sixty-five; provided that the board enters into an~~
11 ~~arrangement with a state agency or a state-created entity for~~
12 ~~the operation of the program.~~

13 E.] D. All amounts paid into the pharmacy fund
14 shall only be used for the purpose of meeting necessary
15 expenses incurred in the enforcement of the purposes of the
16 Pharmacy Act and any other acts administered by the board, the
17 duties imposed thereby and the promotion of pharmacy education
18 and standards in this state. All money unused at the end of
19 the fiscal year shall remain in the pharmacy fund for use in
20 accordance with the provisions of the Pharmacy Act.

21 ~~[F.]~~ E. All funds ~~[which]~~ that may have accumulated
22 to the credit of the pharmacy fund shall be continued for use
23 by the board in administration of the Pharmacy Act."

24 Section 3. A new section of the Pharmacy Act is enacted
25 to read:

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1 "[NEW MATERIAL] CRIMINAL BACKGROUND CHECKS.--

2 A. The board may adopt rules that provide for
3 criminal background checks for all new licensees to include:

4 (1) requiring criminal history background
5 checks of applicants for licensure pursuant to the Pharmacy
6 Act;

7 (2) requiring applicants for licensure to be
8 fingerprinted;

9 (3) providing for an applicant who has been
10 denied licensure to inspect or challenge the validity of the
11 background check record;

12 (4) establishing a fingerprint and background
13 check fee not to exceed seventy-five dollars (\$75.00) to be
14 paid by the applicant; and

15 (5) providing for submission of an applicant's
16 fingerprint cards to the federal bureau of investigation to
17 conduct a national criminal history background check and to the
18 department of public safety to conduct a state criminal history
19 check.

20 B. Arrest record information received from the
21 department of public safety and the federal bureau of
22 investigation shall be privileged and shall not be disclosed to
23 persons not directly involved in the decision affecting the
24 applicant.

25 C. Electronic live fingerprint scans may be used

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1 when conducting criminal history background checks."

2 Section 4. A new section of the Pharmacy Act is enacted
3 to read:

4 "[NEW MATERIAL] SURETY BONDS.--

5 A. The board may require surety bonds or other
6 equivalent means of security, as approved by the board, that
7 are provided by a third party such as insurance, an irrevocable
8 letter of credit or funds deposited in a trust account or
9 financial institution, to secure payment for any administrative
10 or judicial penalties that may be imposed by the board or the
11 state and for any penalties or costs required by board rule or
12 disciplinary action.

13 B. Surety bonds or other equivalent means of
14 security as approved by the board and required in this section
15 shall apply to initial applicants or renewal applicants as a
16 condition for obtaining or maintaining licensure as a pharmacy
17 or wholesale drug distributor.

18 C. The board shall set by rule the amount and
19 conditions of the surety bond or other equivalent means of
20 security authorized in this section.

21 D. The board may waive the surety bond or other
22 requirements of this section if it determines that it is in the
23 best interest of the public to do so. Such waivers may be
24 granted under conditions established by board rule."